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NOMINATION OF JOHN O. COLVIN

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

NOMINATION OF

JOHN O. COLVIN TO BE A JUDGE ON THE UNITED STATES TAX COURT

JULY 26, 1988

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NOMINATION OF JOHN O. COLVIN TO BE A JUDGE ON THE UNITED STATES TAX COURT

TUESDAY, JULY 26, 1988

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:12 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Matsunaga, Moynihan, Baucus, Bradley, Mitchell, Pryor, Riegle, Rockefeller, Daschle, Packwood, Roth, Danforth, Heinz, Wallop, and Durenberger.

[The press release announcing the hearing follows:]

[Press Release No. H-32]

BENTSEN ANNOUNCES HEARING ON NOMINATION OF COLVIN FOR U.S. TAX COURT

WASHINGTON, DC.—Senator Lloyd Bentsen (D., Texas), Chairman, announced Wednesday that the Finance Committee will hold a hearing to review the nomination of John O. Colvin to be a Judge on the United States Tax Court.

The hearing is scheduled for *July 26, 1988, at 10:00 a.m.* in room SD-215 of the Dirksen Senate Office Building.

Mr. Colvin currently serves as Chief Minority Counsel for the Senate Finance Committee.

The CHAIRMAN. This hearing will come to order.

The nominee for consideration this morning is John Colvin. Mr. Colvin, we are very happy to have you here.

Mr. Colvin is the Chief Counsel to the Finance Committee Minority, served as Chief Counsel to the full committee during the consideration of the 1986 tax reform bill; and for 9 years before that, he served on Senator Packwood's personal staff.

Mr. Colvin, you are certainly to be commended for your long years of service, very excellent service, in the United States Senate.

I am not going to make a long speech here because we have a man who knows you so well, the ranking minority member of our committee, the distinguished Senator from Oregon, Senator Packwood.

Senator PACKWOOD. Mr. Chairman, thank you. No matter how many years I may continue to be in the Senate—and I have no immediate plans to retire—I doubt if I will have the privilege of introducing anyone with whom I feel more closely on my staff and the Finance staff or in whom I have more confidence, than John Colvin.

He came with me, right after the 1974 election, and has been doing my tax work ever since; and I only went on the Tax Committee in January of 1973, that is the Finance Committee.

He has worked all the way from Larry Woodworth through the present head of the Joint Tax Committee. He has known them all, has dealt with them all, has done all of my tax work, and moved over to the Finance Committee when I became chairman and worked through the tax reform bill in 1986 as our Chief Counsel.

I don't think anybody could be nominated for the tax court that knows more what this committee has intended over the last 15 years than John Colvin; and I think that is an extraordinarily valuable asset for that court to have.

So, I couldn't come with any greater pride than to come to encourage this committee to immediately report John Colvin's nomination for the tax court, and hopefully we can get him through the Senate in a short period of time.

I would like to introduce only one other person, and that is John's wife, Ava, who I have known ever since John came on our staff and who has had to put up with many dinners with their son alone while John was down here at night until 8, 9, 10, 11, 12, as all of our staffs are when we get involved in what we think is going to be a relatively short period of time and isn't.

So, first I would like to introduce Ava, who is right behind us. Ava? And then, not to introduce to the committee but with pride present to the committee a man who has meant more to me and done for me, and I think frankly from the staff's standpoint, has done as much for the country as anybody that any of us could nominate. John Colvin.

The CHAIRMAN. Thank you.

Mr. COLVIN. Thank you very much.

Senator PACKWOOD. Good luck, John.

The CHAIRMAN. If you would proceed, Mr. Colvin?

Mr. COLVIN. I have no prepared statement, Mr. Chairman.

I just wanted to thank you for holding this hearing and to thank Senator Packwood for that very kind statement and for his willingness to give me a chance to be a part of the tax legislative process for 13 years, and also to thank each of you on the committee and your staffs.

Working here has given me tremendous personal and professional satisfaction, and I think everyone in this room has contributed to that.

Finally, I would just like to say it is an honor to be before you as the President's nominee to the tax court.

The CHAIRMAN. Mr. Colvin, you have been a fine public servant. You have had an unusual amount of experience in seeing how legislation is put together from a tax standpoint.

How do you think that is going to affect you in construing the legislation and arriving at your decisions on the tax court?

Mr. COLVIN. When I learned tax law in law school, it seemed mechanical and flat; but having seen every tax bill put together since 1975, it takes on a dynamic meaning, and I have had a chance to see the intent behind the words.

And I think if I take something with me, it would be a desire to give the meaning to the words as the authors intended and not simply to read them in a cold, mechanical way.

The CHAIRMAN. The tax court was really put together to try to bring about some consistency in case work on tax decisions. How do you think it has worked out from that standpoint?

Mr. COLVIN. I think it has accomplished that purpose. The tax court handles about 90 percent of Federal tax litigation, and it is headquartered in one court house here in Washington. The judges ride circuit around the country, and they come back here and meet as a group of 19 when needed to review decisions. So, they have provided substantive consistency for nation-wide interpretation of the tax law.

The CHAIRMAN. Gentlemen of the committee, we all know this nominee very well and have had a great deal of experience with him. I will not ask each of you to make comments; but if someone wants to ask a question—considering the limitations in time—Senator Baucus?

Senator BAUCUS. Mr. Chairman, I think the nomination is an excellent one. Certainly, Mr. Colvin has the necessary technical background.

I would like to mention also another very important qualification for a person to be a tax judge, and that is his even-mindedness and his fairness and his honesty. You know, all of us meet people during the course of our lives who are less than honest; all of us meet people who are very honest, very straight, straight shooters.

And I want to say, Mr. Chairman, that John Colvin is in the latter category; he is a straight shooter. So, as a judge, I think that people whose cases are brought before Judge Colvin are going to know they are going to get a square deal, and they are going to get an honest, straight judge.

I think that is a quality that stands out in Mr. Colvin as much as in anyone I can think of.

Mr. COLVIN. Thank you, Senator Baucus.

Senator BRADLEY. Mr. Chairman?

The CHAIRMAN. Yes, Senator Bradley?

Senator BRADLEY. I just simply want to echo what Senator Packwood and Senator Baucus have said. I am so glad the nomination has been made. I think that John will serve very well, and I appreciate all of his help during his term here on the committee.

Mr. COLVIN. Thank you, Senator Bradley.

Senator ROTH. Mr. Chairman?

The CHAIRMAN. Yes, Senator Roth?

Senator ROTH. Could I ask one question? I hate to expose my ignorance, but is this a lifetime appointment?

Mr. COLVIN. No, sir; it is 15 years.

Senator ROTH. 15 years? [Laughter.]

Senator BRADLEY. Which some of us think is a lifetime.

Senator ROTH. That is even better than 6 years. [Laughter.]

I, too, want to express my strong support and appreciation of this nomination and say that, in my dealings, he has always been fair and equitable and will make a fine judge.

Mr. COLVIN. Thank you, Senator Roth.

Senator DANFORTH. Mr. Chairman?

The CHAIRMAN. Senator Danforth?

Senator DANFORTH. Mr. Chairman, I would be remiss in not congratulating John Colvin and expressing my support. I believe that John's first public service was performed when I was State Attorney General—isn't that correct?—and you were a law student at the University of Missouri; and you interned in my office?

Mr. COLVIN. During the summer. That is correct.

Senator DANFORTH. I am glad my intern has come this far. [Laughter.]

Mr. COLVIN. Thank you, Senator Danforth.

The CHAIRMAN. Senator Heinz?

Senator HEINZ. I hesitate to add more to the praise of John Colvin, but I have had many opportunities to work with him. So have many members of my staff; and he has had one quality that is remarkable. He has been totally truthful in all his dealings with us all; and that is no higher qualification for a calling of this 15-year, nonlifetime appointment.

I don't know what is a better qualification. John, we wish you good luck and Godspeed.

Mr. COLVIN. Thank you very much, Senator Heinz.

The CHAIRMAN. Yes, Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, may I also make just one observation? In a period where public service has not altogether been exalted and has not always been exemplary, it is remarkable to have before us a still young man who has already distinguished himself in the most extraordinary, difficult, demanding, exacting work, for which he has been paid very little.

And he will now go on to 15 years of yet more demanding, exacting work, for which he may be paid even less. And in an atmosphere in which money is the animating force in every direction, someone who has preferred the public service at very modest recompense is an example to people to follow him and some who have preceded him, if I may say.

I congratulate you, Your Honor.

Mr. COLVIN. Thank you, Senator Moynihan.

The CHAIRMAN. Listen, this fellow is a 10-strike, and I know that. [Laughter.]

We have to get on with this hearing, but go ahead, Senator Matsunaga.

Senator MATSUNAGA. Mr. Chairman, I don't believe any of the members of the committee have any reservations about Mr. Colvin's nomination. His ability, his integrity, his honesty are unquestioned.

The only question I have in my mind, with all those qualifications, now why in the world did you choose the other party? [Laughter.]

Senator PACKWOOD. I feel better, John. I thought he was going to ask about Macadamia nuts. [Laughter.]

The CHAIRMAN. Are there further comments?

[No response.]

The CHAIRMAN. Mr. Colvin, thank you very much.

Mr. COLVIN. Thank you, Mr. Chairman.

The CHAIRMAN. Do we have a motion?

Senator PACKWOOD. Could I move that the committee unanimously report Mr. Colvin's name?

The CHAIRMAN. The motion is so made.

Senator MATSUNAGA. Second the motion.

The CHAIRMAN. Are there objections?

[No response.]

The CHAIRMAN. If not, all in favor of the motion as stated make it known by saying "Aye."

[Chorus of ayes.]

The CHAIRMAN. It looks like you squeaked through. We are delighted. [Laughter.]

[Whereupon, at 10:21 a.m., the hearing was adjourned.]

JOHN O. COLVIN

Biographical Information

(202) 224-6914 (O)

EMPLOYMENT

*Chief Minority Counsel, Senate Finance Committee, January 1987 to date.

*Chief Counsel, Senate Finance Committee, January 1985 to January, 1987.

*Tax Counsel and Legislative Director, Senator Bob Packwood, 1975-84 (Legislative Director from 1982).

*Office of the Chief Counsel, U.S. Coast Guard, Washington, D.C., 1971-75.

OTHER PROFESSIONAL ACTIVITIES

*Adjunct Professor of Law, Georgetown University Law Center, January 1987 to date. Courses: Tax Reform Act of 1986; Recent Legislative Developments.

*Chairman, Tax Legislation Committee, Tax Section, Federal Bar Association.

*Frequent speaker at professional and association tax programs.

EDUCATION

*A.B. - University of Missouri, 1968.

*J.D. - Georgetown University Law Center, 1971; Associate Editor, American Criminal Law Review.

*Masters of Law in Taxation, Georgetown University Law Center, 1978.

PUBLICATIONS

*Editor, "Writing Tax Law--Tax Legislative Procedures," published by the Federal Bar Association, 1981.

*Contesting Loss of Exemption Under IRC 501(c)(3) after Bob Jones University and Americans United, Inc., 2 Federal Bar Journal 182 (1975).

*New Tax Free Fringe Benefit: Employee Educational Assistance Programs, 50 J. of Tax. 20 (1979).

*Medical Reimbursement Plans: New Tests, 50 J. of Tax. 104 (1979).

*Incentive Stock Options, 55 J. of Tax. 202 (1981).

PARTTIME EMPLOYMENT DURING LAW SCHOOL AND COLLEGE (1966-71)

*In Missouri, Summer and parttime employment with (now) Senator John C. Danforth and (now) Senator Christopher S. Bond.

*Niedner, Niedner, Nack & Bodeux, attorneys, St. Charles, Missouri.

*Staff assistant, Senator Mark O. Hatfield.

*Intern, Congressman Thomas B. Curtis (R.-Mo).

*Staff, Missouri State Representative Richard C. Marshall (R.-Webster Groves).

BAR MEMBERSHIPS

*Admitted to practice, Missouri, September 10, 1971.

*Admitted to practice, District of Columbia, January 7, 1974.

COMMUNITY ACTIVITIES

*Chairperson, Arlington County Water Needs Committee, 1979-80.

*President, Williamsburg Intermediate School PTA, 1988-89.

*Vice-President, Taylor Elementary School PTA, 1985-86.

PERSONAL

*Married (Ava), one child (Timothy); live at 2534 North Vermont Street, Arlington, Virginia 22207.

STATEMENT OF SENATOR DOLE

NOMINATION OF JOHN COLVIN TO THE TAX COURT

MR. CHAIRMAN:

IT IS A PLEASURE TO HAVE THE OPPORTUNITY TO SPEAK ON BEHALF OF JOHN COLVIN AT THIS HEARING. HE HAS BEEN A LOYAL AND COMPETENT STAFF MEMBER FOR SENATOR PACKWOOD AND THE ENTIRE FINANCE COMMITTEE IN HIS CAREER ON CAPITOL HILL, AND I AM PLEASED THAT THE PRESIDENT HAS SEEN FIT TO NOMINATE JOHN AS A JUDGE ON THE TAX COURT.

WE ALL KNOW JOHN WELL. HIS CAREER HERE ON THE HILL GOES BACK TO 1975. NOT MANY STAFF MEMBERS HAVE BEEN WILLING TO MAKE THE SACRIFICES NECESSARY TO WORK HERE THAT LONG. BUT THAT MEANS THAT WE HAVE HAD MUCH MORE DIRECT CONTACT WITH THIS NOMINEE THAN WE NORMALLY HAVE, AND WE HAVE HAD MORE THAN ENOUGH TIME TO EVALUATE HIS PERFORMANCE.

IN MY JUDGMENT, JOHN HAS THE ABILITY AND THE TEMPERAMENT TO MAKE AN OUTSTANDING TAX COURT JUDGE. HIS TRAINING ON PERSONAL AND COMMITTEE STAFF WILL GIVE HIM A PERSPECTIVE AS A JUDGE THAT CERTAINLY WILL BE UNIQUELY USEFUL ON THE TAX COURT.

FIRST OF ALL, HE KNOWS THE TAX LAW WELL. HE HAS BEEN HERE WHILE A LARGE PART OF IT HAS BEEN WRITTEN.

JOHN UNDERSTANDS THE PROCESS OF DRAFTING TAX LEGISLATION AND WHY THE TAX CODE IS DRAFTED AS IT IS. ALTHOUGH TAXPAYERS CAN RIGHTLY CRITICIZE THE INTERNAL REVENUE FOR ITS COMPLEXITY, IT CERTAINLY WILL BE HELPFUL TO HAVE A JUDGE ON THE COURT WHO UNDERSTANDS HOW THE DRAFTSMEN WORK AND WHO WILL NOT, FOR EXAMPLE, FEEL AN OBLIGATION TO ASSUME INTENT THAT IS NOT REALLY THERE.

PARTICIPATING IN DRAFTING OF LEGISLATION IS SOMETHING THAT MOST TAX PRACTITIONERS NEVER HAVE THE BENEFIT OF HAVING EXPERIENCED. IT IS NOT SURPRISING THAT SO MANY ARE LEFT PERMANENTLY PERPLEXED. JOHN WILL NOT SUFFER FROM THAT DISABILITY.

JOHN ALSO UNDERSTANDS THE IMPORTANCE, AS WELL AS THE LIMITATIONS, OF LEGISLATIVE HISTORY. IT WILL BE GOOD TO KNOW THAT WE WILL HAVE A JUDGE WHO UNDERSTANDS THE PROCESS BY WHICH LEGISLATIVE HISTORY IS DEVELOPED.

THE MASSIVE CHANGES THAT HAVE BEEN MADE IN THE INTERNAL REVENUE CODE OVER THE LAST FEW YEARS MAKE THE ROLE OF LEGISLATIVE HISTORY FAR GREATER THAN IN PRIOR YEARS. IT USED TO BE THAT A JUDGE COULD JUST LOOK BACK TO EARLIER CASES AND THE REGULATIONS TO DECIDE A CASE. NOW, MUCH OF THE LAW IS NEW AND NEW PRECEDENTS WILL HAVE TO BE DEVELOPED. IT IS PARTICULARLY HELPFUL AT THIS TIME TO HAVE LEGISLATIVE STAFF EXPERIENCE ON THE TAX COURT.

JOHN, I KNOW YOU WILL BE A GOOD JUDGE. YOU HAVE SHOWN A WILLINGNESS TO WORK HARD, AN INTEREST IN MAKING THE TAX LAWS WORK RIGHT, AND AN ABILITY TO BE OBJECTIVE. THOSE ARE QUALITIES THAT WILL SERVE YOU WELL.

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